


 मामला क्रमांक Cr. A. 783 सन् 2001/

आदेश पत्रक (पूर्वानुबद्ध)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
<u>HIGH COURT OF CHHATTISGARH AT BILASPUR</u> <u>CRIMINAL APPEAL NO. 783 OF 2001</u> <u>DIVISION BENCH:</u> HON. SHRI L.C. BHADOO, & HON. SHRI DHIRENDRA MISHRA, JJ APPELLANT Balkishan s/o Jokhram, Aged 48 years, R/o Daraganj, P.S. Daraganj, Distt. Allahabad (U.P.) present R/o Chunabhatti, In front of Kalimandir, P.S. Gudiyari, Raipur (C.G.) Versus NON-APPLICANT State of Chhattisgarh ----- Present: Mr. R.P. Tripathi, counsel for the accused/appellant. Mr. U.N.S. Deo, Govt. Advocate for the State. ----- <u>ORAL JUDGMENT</u> (30th April 2007) <u>PER L.C. BHADOO, J</u> This appeal is directed against the judgment of conviction and order of sentence dated 20th August 2001 passed by VI Additional Sessions Judge, Raipur (C.G.) in Sessions Trial No. 240/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the IPC, for committing the murder of Bhondu @ Munna, sentenced him to undergo imprisonment for life and pay a fine of Rs.2,000/- in default of payment of fine to further undergo R.I. for three months.		

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	2. Case of the prosecution, in brief, is that accused Balkishan was the driver of Swaraj Majda truck bearing No. M.P.25/B-0041 of Kanwaljeet Singh Bhalla whereas Bhondu (since deceased) was conductor on the truck. On 19.3.2000 at about 9.00 a.m. Kotwar Shersingh of village Pirda went for taking bath to village pond where he heard from the boys of the village that a dead body of someone is lying on the corner of the road, on which first he went to his residence and thereafter he went on the spot. He saw that body of one person, aged about 30 years, was lying by the side of the road. There were stab injuries on the head, chest and stomach and clotted blood was present. There was crowd of villagers at the spot. He gave mereg intimation (Ex.P/5) in the Police Station Mandir Hasoud, based on that First Information Report (Ex.P/6) was registered. Investigating officer left for the scene of occurrence and after giving notice (Ex.P/7) to the Panchas, prepared inquest (Ex.P/8) on the dead body of unknown person. Site plan (Ex.P/9) was prepared by the investigating officer. Site plan (Ex.P/10) was prepared by the Patwari. Clothes of the deceased were seized under Ex.P/11. Dead body was sent for postmortem examination to Medical College Hospital Raipur where Dr. Ulhas Gonnade (PW-9) conducted postmortem and prepared the postmortem report (Ex.P/18), in which he opined that cause of death was due to shock and haemorrhage as a result of multiple injuries to the body. The accused while in police custody, gave memorandum (Ex.P/22) regarding the place where he kept the weapon of offence	

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	<i>Gupti</i> which was seized at the instance of the accused under Ex.P/27. Truck was seized under Ex.P/24. Clothes of the accused were seized under Ex.P/26. The spanner was seized under Ex.P/23. All the seized articles were sent to Forensic Science Laboratory, Raipur under Ex.P/36, from where report Ex.P/38(A) was received. As per the F.S.L. report, shirt, underwear and <i>Gamchha</i> of the deceased as also the weapon of offence <i>Gupti</i>, wheel <i>pana</i> i.e. spanner, were found stained with blood. 3. After completion of investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Raipur who in turn committed the case to the Sessions Judge, Raipur from where learned Additional Sessions Judge received the case on transfer for trial. 4. Prosecution in order to establish the charge against the accused examined 21 witnesses at the trial. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. 5. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused as aforementioned.	

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	6. We have heard Mr. R.P. Triapthi, learned counsel appearing on behalf of the accused/appellant and Mr. U.N.S. Deo, learned Govt. Advocate for the State/respondent. 7. In this case there is no direct or ocular evidence to connect the accused with the crime in question. Conviction of the accused rests on circumstantial evidence, based on which the prosecution has tried to establish the offence against the accused. The circumstances relied upon by the prosecution are as follows: (i) that the accused and the deceased were seen last together; and (ii) that weapon of offence <i>Gupti</i> and spanner were recovered at the instance of the accused and on examination found stained with blood. 8. As per settled law in order to rest conviction based on the circumstantial evidence, as held by the Hon'ble Apex Court in the matter of Dhananjoy Chatterjee Vs. State of W.B. reported in (1994) 2 SCC 220, the circumstantial evidence must satisfy the following tests: (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;	

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	(iii) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. 9. So far as the first circumstance of last seen together is concerned, as has been held by the Hon'ble Apex Court in the matter of <u>Bodhraj alias Bodha and others Versus State of Jammu & Kashmir</u> reported in <u>(2002) 8 SCC 45</u>, "the theory of last seen comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together." Based on the above principle we proceed to examine the evidence of the prosecution witnesses. PW-1 Kanwaljeet Singh Bhalla, owner of the truck, has stated that in the	

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	month of March accused Balkishan along with conductor Bhondu went with the truck with goods to Bhilai, in the evening accused came back with the truck after unloading the goods and parked the truck near transport. He met him, at that time the accused was all alone and Bhondu was not in the truck. He enquired from accused about Bhondu, whereupon he said that Bhondu might have gone to take dinner. He asked accused Balkishan about the freight charges, then he informed him that he has given the freight to Bhondu and he will give it at the residence. Thereafter, he enquired from his mother at his residence as to whether Bhondu had deposited the freight charges, on which his mother informed that Bhondu did not come to deposit the freight charges. Just after two-three days driver Balkishan informed him that Bhondu has been murdered. In the cross-examination he has stated that it is correct to say that in the morning of 18.3.2000 Balkishan took the truck with him and at about 9.00 p.m. on the same day he saw Balkishan. PW-2 Amrik Singh has simply stated that accused was working as driver of the truck, beyond that he has not stated anything. PW-3 Gurmeet Singh Bhalla has stated that before Holy festival, one day at about 9-10 p.m. he was sitting in the garage, at that time accused came with the truck of his brother, parked the same and at that time conductor was not on the truck. Therefore, if we read the evidence of these three witnesses, we find that there is no cogent and clear evidence to suggest as to when they saw deceased Bhondu with the accused and at what time they	

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	departed. As per the evidence of these witnesses, when the accused parked the truck, deceased was not on the truck whereas the body of deceased was found on 19.3.2000 at about 10.30 a.m. near village Pirda, therefore, if we read the evidence of these witnesses there is no legal, clinching evidence to establish the fact that the deceased was, in fact, last seen with the accused, near the place of occurrence before the commission of murder. Moreover, applying the law laid down by the Hon'ble Apex Court in the matter of Bodhraj alias Bodha and others (supra) that without any positive evidence it is hazardous to convict the accused merely on the basis of last seen together, on scrutiny of the evidence on record, we do not find any evidence on record which shows that the accused had any intention or motive or grudge against the deceased to cause his death, to connect him with the crime in question. Moreover, the time gap between the point of time when the accused and the deceased were last seen alive together in the morning of 18.3.2000 and when the accused was seen alone in the night at about 9.00 p.m., is 12 hours. The prosecution has not adduced any evidence to establish the fact whether somebody saw Bhondu with the accused when he came with the truck in the night or whether they left Bhilai together or both of them were seen together in the truck near the place of occurrence where dead body of Bhondu was found. Therefore, there is no legal clinching evidence on record to connect the accused with the crime in question based on the last seen theory.	

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	10. As far as recovery of <i>Gupti</i> and spanner at the instance of the accused is concerned, as per the F.S.L. report blood was found on these articles but there is no evidence regarding confirmation of the origin and group of the blood found on these articles. Unless there is evidence to establish that the blood found on the <i>Gupti</i> and spanner was similar to the blood group of the deceased, merely on the basis of recovery of these two bloodstained articles the accused can not be held guilty. 11. For the reasons stated above, we are of the considered opinion that based on the circumstantial evidence the prosecution has not been able to establish the charge leveled against the accused beyond reasonable doubt. Therefore, conviction of the accused under Section 302 of the IPC cannot be sustained. 12. In the result, the appeal succeeds. Conviction of the accused under Section 302 of the IPC for commission of murder of Bhondu and sentence imposed thereon, are set aside. He is directed to be set at liberty forthwith, if not required in any other case.	
	Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge